



POLICE DEPARTMENT

March 6, 2009

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Henry Vela
Tax Registry No. 905231
42 Precinct
Disciplinary Case No. 83945/08

The above-named member of the Department appeared before me on November 20, 2008, charged with the following:

1. Said Police Officer Henry Vela, while assigned to the 42 Precinct, while off duty, at approximately 2100 hours, on or about November 23, 2007, in the vicinity of 416 South Country Road, Suffolk County, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said officer, while involved in a domestic dispute with an individual, identity known to the Department, did grab said individual by the hair. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT –
PROHIBITED CONDUCT

2. Said Police Officer Henry Vela, while assigned to the 42 Precinct, while off duty, at approximately 2100 hours, on or about November 23, 2007, in the vicinity of 416 South Country Road, Suffolk County, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said officer, while involved in a domestic dispute with an individual, identity known to the Department, did threaten to cause physical harm to said individual. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT –
PROHIBITED CONDUCT

3. Said Police Officer Henry Vela, while assigned as indicated in Specification No. 1, while off duty on the date indicated in Specification No. 1, having been involved in an unusual police occurrence, did thereafter fail and neglect to promptly notify the Operations Unit, as required. *(As amended)*

P.G. 212-32, Page 1, Paragraph 2 – OFF DUTY INCIDENTS –
UNIFORMED MEMBERS OF SERVICE

The Department was represented by Adam Sheldon, Esq., Department Advocate's Office, and the Respondent was represented by Michael Martinez, Esq.

The Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Not Guilty.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Lieutenant John Clifford and Sergeant Darlene Edwards as witnesses.

Lieutenant John Clifford

Clifford, a 16-year member of the Department, is currently assigned as the third platoon commander in the 42 Precinct. He and the Respondent have been assigned to the same command for over two years, but they work on different platoons. He has not directly supervised the Respondent nor had any negative interaction with him.

Clifford testified that at approximately 12:40 p.m. on November 24, 2007, he was working at the desk when the Respondent's [REDACTED], [REDACTED] called the command and asked to speak with a supervisor. Clifford took the call. He described [REDACTED] as "very concerned" about the Respondent's drinking. [REDACTED] told him about an incident that had occurred the previous night at a Long Island establishment called Painters Restaurant. [REDACTED] told him that she was at the

¹ For purposes of clarity, in this decision, [REDACTED] will be referred to as "[REDACTED]"

restaurant with a friend (subsequently identified as [REDACTED]) waiting for the Respondent to arrive. At one point, while [REDACTED] was talking to a man, the Respondent entered the restaurant and appeared to [REDACTED] to be intoxicated. [REDACTED] told Clifford that the Respondent walked up to her, pulled her hair, and said that the matter would be settled at home. [REDACTED] told Clifford that she spent the night at [REDACTED]'s house because she was afraid to go home. [REDACTED] indicated to Clifford that she was not interested in getting the Respondent into trouble but was concerned about the Respondent's drinking. She explained to Clifford that the Respondent had been sent for [REDACTED] [REDACTED] in the past and she wanted him to go [REDACTED] a second time because he was drinking again. Clifford did not recall [REDACTED] telling him anything else derogatory or insulting about the Respondent. The telephone call lasted five to ten minutes.

Clifford testified that at no point during or since the telephone call has [REDACTED] recanted the allegations that she made against the Respondent. Similarly, at no point during the call did she ever refuse to cooperate with his questioning or with the investigation in any way. The telephone call was not recorded. On the completion of the call, Clifford notified the duty captain of the situation. At the duty captain's direction, Clifford passed the information onto the Internal Affairs Bureau (IAB). Clifford has had no further involvement in this investigation.

On cross-examination, Clifford testified that all he did in regard to this case was take down the information that he received from [REDACTED] on the November 24, 2007, telephone call and pass it onto the proper channels. He did not look to "poke holes" in [REDACTED]'s narrative. The first thing [REDACTED] told him on the call was that the Respondent was drinking and that she wanted him to [REDACTED]. It was only when Clifford asked her why she thought the Respondent needed [REDACTED] that [REDACTED] told him about the altercation at the restaurant.

Sergeant Darlene Edwards²

Edwards, a 21-year member of the Department currently assigned to the Queens South Investigations Unit, investigated the allegations that [REDACTED] made against the Respondent on November 24, 2007. At approximately 5:00 p.m. that day, Edwards spoke with [REDACTED] on the telephone.³

In the telephone interview with Edwards, [REDACTED] stated that she believed the Respondent needed help with his drinking. [REDACTED] proceeded to tell Edwards about an incident that occurred the previous night at the Painters Restaurant. [REDACTED] told Edwards that she was at a restaurant with a co-worker, [REDACTED] and called the Respondent to ask him to join them. [REDACTED] gave the Respondent directions to the restaurant, but he later called her back agitated because he could not find it. Eventually the Respondent was able to find the restaurant, and [REDACTED] met him outside. Edwards could not recall [REDACTED]'s description of the Respondent's demeanor.

[REDACTED] told Edwards that she went back inside the restaurant to join [REDACTED] and the Respondent approached just as a man was asking them for the time. [REDACTED] told Edwards that the Respondent grabbed her by the back of her hair, cursed at her, called her names, and threatened that he would continue to physically abuse her at home. [REDACTED] told Edwards that [REDACTED] and restaurant workers attempted to break up the altercation. When these people asked [REDACTED] if she wanted the police to be called, [REDACTED] replied negatively and explained that she just wanted the

² During the period of the investigation, Edwards' surname was Campbell, as reflected on, for example, her phone conversations with [REDACTED] (see Department Exhibit [DX] 1 & 1a, tape and transcript).

³ The Advocate described the attempts that the Department made to have [REDACTED] and [REDACTED] appear in person. He stated that the previously-assigned advocate left two telephone messages for both [REDACTED] and [REDACTED]. None of the messages was returned. In addition, two letters were sent to both of their homes and a third letter (a refusal-to-testify letter) was sent to [REDACTED]. The Advocate was eventually able to reach [REDACTED] on the phone. [REDACTED] told him that she stood by her statement, she was satisfied with the fact that the Respondent had since received [REDACTED] her [REDACTED] is back on track, and she would not appear to testify at trial. As for [REDACTED] in addition to the two telephone messages and letters sent to her house, she was served with a litigation support subpoena, which was received at her home by her daughter. When the Advocate ultimately reached [REDACTED] on the telephone, she told him that she stood by her statement but was unwilling to appear at trial "based on information or conversations that she had with Ms. [REDACTED]"

Respondent to leave her alone.

█████ told Edwards that she called a friend of the Respondent (subsequently identified as █████ called "████") who had been waiting outside the restaurant. █████ came inside and succeeded in calming the Respondent down and removing the Respondent from the location.

█████ stayed in the restaurant until she was sure the Respondent was gone. Because she was afraid to go home, █████ spent the night at █████'s house. █████ told Edwards that the Respondent called several times throughout the night and again the next morning to continue their argument.

Edwards stated that █████ cooperated with her questioning and never recanted to her the allegations against the Respondent. At one point, Edwards asked █████ for █████'s telephone number. █████ told Edwards that she wanted to call █████ first to see if it was okay to give out her number. █████ later called Edwards back and gave her the number.

According to Edwards, █████ explained to her that her main concern was getting help for the Respondent's drinking. █████ was also concerned, though, for her own safety, and she wanted to make sure that it was safe to go home. █████ did not say anything else derogatory about the Respondent, and she was "perfectly clear" that she did not want the Respondent to get into trouble.

Edwards testified that the November 24, 2007, telephone interview with █████ was recorded, but the recording was not a fair and accurate depiction of the actual conversation. Edwards explained that because the jack that connected the telephone and the recording device was loose, only her side of the conversation was successfully recorded. Edwards did not realize until much later that the conversation with █████ was not properly recorded.

On the same day that Edwards spoke with █████, she also conducted a telephone interview of █████ (See DX 1 and 1a, interview tape and transcript). Edwards explained that the interview

was conducted on the telephone because it was late in the evening, and [REDACTED] asked if they could speak on the telephone instead of meeting in person.

In the interview, [REDACTED] stated that she and [REDACTED] were out for dinner on November 23, 2007, and the Respondent joined them at 8:30 or 9:00 p.m. The Respondent called [REDACTED] when he arrived at the restaurant, and [REDACTED] went out to see him in the parking lot. When [REDACTED] came back inside the restaurant, she seemed a little upset.

[REDACTED] told Edwards that the Respondent came inside and sat at the bar. [REDACTED] and [REDACTED] listened to the band approximately ten feet away from him. [REDACTED] observed the Respondent receive at least three drinks from the bartender. According to [REDACTED] "not two minutes" after a man approached [REDACTED] to ask her for the time, the Respondent suddenly grabbed [REDACTED]'s hair and started shaking her head while saying, "What the F are you doing. Out of the blue, in front of everybody." [REDACTED] stated that she stepped in between [REDACTED] and the Respondent, and she asked the Respondent what he was doing. Meanwhile, [REDACTED] and the Respondent yelled at each other. The Respondent told [REDACTED] that he was going to "kick her ass" when she got home. When the Respondent let go of [REDACTED] he "got in [REDACTED]'s face."

At that point [REDACTED] said, security guards approached to see if [REDACTED] was okay. [REDACTED] told the guards that the Respondent needed to be escorted away. The Respondent did not want to leave, though, and it took 20 or 30 minutes to get him outside. At one point, the restaurant security asked [REDACTED] "Why don't you call the police," but [REDACTED] told them not to call the police because she did not want the Respondent to get into trouble. According to [REDACTED], three security guards were present at the scene and there were many

other people watching. The Respondent left only after [REDACTED]⁴ who had been waiting in the car, came inside to get him. [REDACTED] had never seen the Respondent drunk before, but he had to be drunk that night to cause a scene like that. Afterwards, [REDACTED] and [REDACTED] waited in the restaurant until they were sure the Respondent was gone. The restaurant bouncer walked [REDACTED] and [REDACTED] to the car, and [REDACTED] spent the night at [REDACTED]'s house because she was afraid to go home.

[REDACTED] told Edwards that the Respondent called her at approximately 9:00 a.m. the next day looking for [REDACTED]. According to [REDACTED], he sounded even more drunk. The Respondent called twice more. By the last time, at approximately 1:30 p.m., the Respondent sounded normal again and apologized to her, saying that [REDACTED] had called his job and that he "hope[s] she recants her story." [REDACTED] stated that [REDACTED] had only one drink on the night of the incident and was not intoxicated. [REDACTED] also stated that [REDACTED] called her at work to see if she and [REDACTED] were okay. [REDACTED] indicated that [REDACTED] told her that he had castigated the Respondent for his conduct.

Edwards testified that as part of the investigation, she conducted an Official Department Interview of the Respondent the day after the incident. In addition, her supervisor, Lieutenant Tarpey, made an unsuccessful attempt to speak with the bouncers from the restaurant. As a result of Edwards' investigation, the Respondent was placed on modified duty, and the case was forwarded to IAB.

On cross-examination, Edwards testified that she worked on the Respondent's case for only a short period of time, and she knew from the beginning that the case would be passed onto another investigatory unit. Edwards' investigation of the case lasted only several hours.

Edwards reiterated that Tarpey called the restaurant in an effort to contact witnesses (see

⁴ [REDACTED] at times referred to the friend as "[REDACTED]," but the Respondent stated his name as "[REDACTED]" in his testimony.

Respondent's Exhibit [RX] A & A1, interview tape and transcript of [REDACTED] bar manager, dated November 24, 2007). Neither Edwards nor Tarpey went to visit the restaurant. Edwards stated that, as far as she knows, nobody from the restaurant ever came forward to say that they witnessed the incident as it was described by [REDACTED]

In the interview, [REDACTED] stated that he worked the previous night and was unaware of a [REDACTED] taking place that required restaurant employees to separate the man and woman involved. He further stated that he is usually aware of every incident or altercation that takes place, and it had been almost a year since an altercation last took place on the premises. [REDACTED] said that the restaurant was pretty busy the night before, and it was possible that something happened without anybody knowing. He, however, is always the first to know when the restaurant security staff becomes involved in an incident.

After checking with security staff, [REDACTED] called Tarpey back and told him that there had, in fact, been a "little argument" the night before between a man and a woman at some point after 10:30 p.m. The woman was "just like stomping her feet . . . on the floor" and "arguing with a guy." Security staff approached the couple and said "you can't do that in here." The couple walked out the back door. The bouncer did not observe the man pulling the woman's hair, and [REDACTED] said "there was no physical aspect of it at all."

Edwards testified that she took notes during the telephone conversation with [REDACTED] and her memory of the conversation is based on those notes and an interview summary that she prepared immediately afterward. As for the interview with [REDACTED], Edwards reiterated that she did not meet with [REDACTED] in person because it was late. Edwards stated, however, that she was mistaken when

she testified earlier that [REDACTED] asked if they could just speak on the telephone instead of meeting in person. The Respondent was fit for duty at his Official Department Interview.

Upon questioning by the Court, Edwards could not recall if she asked [REDACTED] if she had been drinking on the night of the incident.

The Respondent's Case

The Respondent testified in his own behalf.

Respondent Police Officer Henry Vela

The Respondent, a 15-year member of the Department, is currently assigned to the 42 Precinct. He is currently on modified duty status as a result of the allegations made against him by [REDACTED]. Prior to the current case, he had never been the subject of Departmental charges. He testified that he and [REDACTED] have been [REDACTED] for over 16 years and have four children. They live in [REDACTED].

The Respondent testified that on November 23, 2007, he and [REDACTED] were driving to meet [REDACTED] and [REDACTED] at Painters Restaurant. The Respondent had never been there before, and he called [REDACTED] for directions. According to the Respondent, [REDACTED] was slurring her words and gave bad directions. It took the Respondent 20 or 30 minutes before he successfully found the restaurant. [REDACTED] was waiting for him outside, and the Respondent could tell that she was tipsy. The Respondent explained that [REDACTED]'s eyes were glassy, and she was not walking normally. The Respondent was feeling a little annoyed because it took so long to find the restaurant, and he asked [REDACTED] sarcastically if she was having a good time. [REDACTED] responded by cursing at him and then walked back into the restaurant. The Respondent was stunned by [REDACTED]'s response. After

sitting out in the car for approximately 20 minutes, the Respondent went inside and sat at the bar, where he had a drink and some food. Meanwhile, [REDACTED] and [REDACTED] were on the dance floor. From his location, the Respondent was able to see them drinking alcohol.

The Respondent testified that at 1:30 a.m., the band started breaking down their instruments, and people started leaving the restaurant. According to the Respondent, [REDACTED] approached him and started to curse at him again. The Respondent told her to calm down. When the Respondent saw that [REDACTED] was not calming down, he and [REDACTED] left. The Respondent stated that he left the premises on his own account and did not have to be ushered out. He testified that at no point during the exchange did he grab [REDACTED] by the hair or tell her that he was going to kick her ass when she got home. He further testified that at no point did he touch or threaten [REDACTED] in any way. At no point, according to the Respondent, did any restaurant employees have to intercede. The Respondent stated that he had spent approximately an hour at the bar, and he consumed a drink and a half during that period. After leaving the restaurant, the Respondent went home. [REDACTED] did not come home that night. The Respondent testified that he thought [REDACTED] did not come home because she "felt bad."

At approximately 4:30 p.m. the following day, the Respondent was instructed to report to the Queens South Investigations Unit. After being interviewed about the incident, he was placed on modified assignment. A couple of days later, after appearing at the [REDACTED], he was sent to [REDACTED]. When he got out of the [REDACTED] apologized to him. They are still married to each other. The Respondent testified that he did not believe he had an obligation to inform the Department about the November 23, 2007, incident because it was just a brief verbal argument between him and his [REDACTED].

On cross-examination, the Respondent testified that he did not leave after [REDACTED] cursed at

him in the parking lot because he wanted to make sure that she was all right. According to the Respondent, [REDACTED] observed [REDACTED] curse at him. The Respondent stated that [REDACTED] had at times cursed at him before. He testified that because he was driving on the night of the incident, he had not planned on drinking alcohol. Because he ended up consuming a drink and a half, however, [REDACTED] drove him home. The Respondent was drinking pineapple juice and vodka, and he ate the snacks that were on the bar. While the Respondent was sitting at the bar, [REDACTED] was outside talking on the telephone. [REDACTED] did not come inside until the argument with [REDACTED] took place.

In 2004 or 2005, the Respondent was sent to Department [REDACTED]. The [REDACTED] suggested that the Respondent go for [REDACTED] and the Respondent complied. After [REDACTED] the Respondent abstained from alcohol for two or three years. Although he started to drink again a couple of months before the incident, he still does not drink on a regular basis. He stated that he would probably become intoxicated if he had more than two drinks.

The Respondent stated that the morning after the incident he tried calling [REDACTED] but did not reach her. Later in the day, he called [REDACTED] at work. [REDACTED] picked up the telephone and told him that [REDACTED] was not there. (The Respondent testified that [REDACTED] and [REDACTED] worked together at a bank branch). The Respondent did not recall apologizing to [REDACTED] or discussing with her what occurred the previous night. The Respondent did not recall speaking to [REDACTED] more than once that day.

The Respondent testified that he and [REDACTED] see each other on a daily basis and do not have any [REDACTED] problems. They never discuss this case with each other. According to the Respondent, [REDACTED] and [REDACTED] fabricated these charges against him.

Upon questioning by the Court, the Respondent testified that he did not have anything to

drink before he arrived at the restaurant. He stated that when [REDACTED] was cursing at him at the bar, he was mainly trying to calm her down but may have used a few curse words himself. According to the Respondent, he was not yelling.

FINDINGS AND ANALYSIS

Specification Nos. 1 & 2

The instant charges arise out of an off-duty event that occurred at the Painters Restaurant on Long Island between the Respondent and his wife, [REDACTED]. The Department alleged that [REDACTED] and her friend, [REDACTED] were out at the restaurant and the Respondent was invited to join them. When he arrived, he saw another man speaking to [REDACTED]. The Department charged that the Respondent pulled [REDACTED]'s hair and cursed at her. After the argument was broken up, the Department alleged, the Respondent threatened to beat [REDACTED] up when they got home.

According to the Respondent, on the other hand, an argument did occur at Painters, but it was [REDACTED] who was at fault. The Respondent stated that he arrived at the restaurant to find [REDACTED] and [REDACTED] already present. He had difficulty finding the place, and seeing his wife already intoxicated, asked her annoyedly, "oh, having a good time?" [REDACTED], the Respondent said, responded by cursing at him. He denied pulling her hair or threatening her, but admitted he may have sworn as well.

This Court, therefore, must resolve two diametrically opposed accounts. There are several issues at the outset that must first be discussed.

The Department's case relies entirely on hearsay. Although hearsay is admissible in this forum, see Matter of Ayala v. Ward, 170 A.D.2d 235 (1st Dept. 1991), there are significant reasons for caution in cases like this that present close questions of credibility. The hearsay is

central to the Department's case, so there is a pointed question of basic fairness in using the hearsay to reach a finding of fact. See Disciplinary Case No. 77005/01 (hearsay declarations are insufficient to support findings of guilt in cases that pose close questions of credibility).

Here, the assertions of [REDACTED] and [REDACTED] that the Respondent grabbed [REDACTED]'s hair and threatened to beat her up are central to the Department's case. The Department offered no other evidence to corroborate these claims. Thus, the believability of [REDACTED] and [REDACTED] is crucial to the Department's case.

Both [REDACTED] and [REDACTED] were contacted by the Department to appear at trial, and both refused to do so. Sergeant Edwards, of the Queens South Investigations Unit, interviewed both [REDACTED] and [REDACTED] over the telephone. Their accounts were introduced through Edwards. In light of the witnesses' failure to testify, the Court cannot observe their demeanors, explore possible motives to lie, or assess the credibility of their accounts after the test of cross-examination. This is especially true here because of the element of alcohol, which could have affected the witnesses' memories of the events the prior night. Also, counsel for the Respondent did not have the opportunity to explore the closeness of the friendship between [REDACTED] and [REDACTED] and ascertain whether they had discussed the incident. This is especially significant because Edwards first spoke to [REDACTED], then [REDACTED] called [REDACTED] to see if it was okay to give Edwards her number.

Furthermore, a tape and transcript of Edwards' interview with [REDACTED] could not be admitted because of a technological error by the investigator. The interview was performed over the phone, but the wires were not plugged in completely, so only Edwards' voice could be heard on the tape. Edwards testified about her interview with [REDACTED] from her contemporaneous notes and a worksheet. This manner of proffering [REDACTED]'s version of events was the best the Department could do at trial under the circumstances, but it is far from a reliable form of hearsay. See, e.g.,

Matter of Health & Hosps. Corp. v. Little, OATH Index No. 248/07 (Jan. 19, 2007).

Further, the hearsay accounts are uncorroborated by any other evidence. See Matter of Grossman v. Kralik, 217 A.D.2d 625, 626 (2d Dept. 1995) (written memorandum of non-testifying judge who saw courtroom attendant sleeping was corroborated by other testimony at hearing). No independent witnesses – i.e., someone other than [REDACTED] or her friend – testified in support of the Department. Local law enforcement did not respond, and there were apparently no injuries, so there was no medical treatment or photographs.

Moreover, the bar manager at Painters [REDACTED] spoke to Lieutenant Tarpey of Queens South Investigations the day after the incident. When Tarpey asked [REDACTED] if there had been an incident the previous night “where the bouncers got involved and separated a man and a woman. They were having like a little [REDACTED] argument,” [REDACTED] adamantly denied it. Still, [REDACTED] agreed to talk to some staff members who had worked the night before. [REDACTED] called Tarpey back and told him that there had been “a little argument” in which a woman was stomping her feet and arguing with a man. The security staff approached and said “you can’t do that in here and that’s when they walked out the back door,” concluding the incident. [REDACTED] emphasized, when asked by Tarpey, that there was no “physical aspect” to the argument.

[REDACTED]’s statement is consistent in part with the Respondent’s testimony. The Respondent testified that [REDACTED] approached and began cursing at him. He tried to calm her down, but left with his friend [REDACTED] when ultimately unsuccessful. The Respondent described the events as “a little commotion.” He denied, however, that any bouncers interceded between him and [REDACTED]

With [REDACTED] lending credibility to the Respondent’s version of events, and without

having the opportunity to assess the credibility of the accounts of [REDACTED] and [REDACTED] under cross-examination, observe their demeanors and explore whether they influenced each other (not necessarily in bad faith), the weight that can be accorded to these two hearsay accounts is very limited. In similar factual situations, hearsay accounts have been found to be insufficient to establish the Respondent's guilt. See, e.g., Disciplinary Case No. 77005/01 (Respondent found not guilty of pushing and hitting his [REDACTED] and pushing his [REDACTED] during a verbal dispute when neither [REDACTED] appeared to testify at Department trial).

Through Lieutenant Clifford the Department presented evidence that [REDACTED] made a "prompt outcry," see generally People v. Rice, 75 N.Y.2d 929, 931-32 (1990) (prompt report by complainant of a rape is admissible as exception to hearsay rule, in order to prove that a timely complaint of rape was made), telling Clifford that the Respondent had pulled her hair and made threats. Nevertheless, without [REDACTED]'s presence, that statement ultimately could not be tested. Nor could that of her friend [REDACTED]. Based on the above, the Department has failed to present sufficient credible evidence to prove these two charges and, accordingly, the Court finds the Respondent Not Guilty.

Specification No. 3

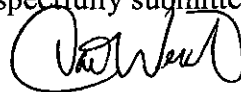
The third specification charges the Respondent with failing to report the events of November 23, 2007, to the Operations Unit as an unusual police occurrence in which he became involved. *Patrol Guide* § 212-32 dictates that upon becoming involved in an off-duty "unusual police occurrence" outside the City of New York, a member must notify the Operations Unit. The Patrol Guide defines "unusual police occurrence" as including "family disputes and other incidents of domestic violence in which the officer is either a participant or a witness." The

Court has found the Respondent Not Guilty of grabbing [REDACTED] by the hair and threatening her with further violence. However, even by the Respondent's testimony, there was a loud argument at Painters between him and his [REDACTED]. The question here is whether that argument falls within this section of the Patrol Guide.

The Court concludes that the incident is not covered by the Patrol Guide and that the Respondent did not have to report it. The use of angry and even profane language during an argument regarding a non-Department matter between an off-duty member of the Department and a non-member, without more, has been found not to constitute misconduct. *See Disciplinary Case No. 82563/07* (citing earlier disciplinary case where it was held that even if off-duty member had called a civilian a prick during an argument in a store, this purely verbal dispute did not rise to the level of actionable off-duty misconduct). Nothing else escalated this incident into something that had to be reported. There is no evidence that there were other [REDACTED] problems between the Respondent and [REDACTED] and that the Painters dispute took place in such a context. *Cf. Disciplinary Case No. 81378/05* (Detective Guilty of failing to report, where he accidentally knocked his girlfriend [also a Detective, with whom he lived] into a metal dog cage, causing bloody injury; incident took place in context of "high domestic tension," including accusations of infidelity and Respondent demanding rent from his girlfriend). Here, there was no injury or property damage. *Cf. Disciplinary Case No. 82586/07* (after pleading guilty and testifying in mitigation, officer forfeited 10 vacation days for, inter alia, failing to notify Department, where, after argument at his girlfriend's house over them breaking up, officer slammed a statuette onto girlfriend's bed in "frustration"; the statuette bounced off bed, hit the television, cracked the television frame, then bounced into armoire and cracked armoire's mirror, then the statuette broke). The Court does not read the Patrol Guide to mandate the reporting of every argument

between domestic relations, even those that involve yelling and screaming in public. As such, the Court finds the Respondent Not Guilty of the third specification.

Respectfully submitted,



David S. Weisel
Assistant Deputy Commissioner – Trials

APPROVED



APR 29 2009
RAYMOND W. KELLY
POLICE COMMISSIONER